

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5889 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

R.R.VORA

VERSUS

STATE OF GUJARAT & ANR.

Appearance:

MR SV RAJU for Petitioner

MS SIDDHI TALATI for Respondents

Coram: S.K. Keshote,J

Date of decision: 15/09/1997

C.A.V. JUDGMENT

#. The petitioner, Senior Clerk in the office of Director of Health & Medical Services & Medical Education, State of Gujarat, filed this Special Civil Application and prayer has been made for direction to the respondent to treat him in the cadre of Junior Clerk/Typist from 19.10.67 and to give him all consequential benefits following therefrom.

#. The petitioner was initially appointed on 7.10.67 as Junior Clerk in the office of Civil Surgeon, Ahmedabad District. Then he was absorbed as Clerk-cum-Typist. The petitioner was transferred as Clerk-Typist from the office of Civil Surgeon at Ahmedabad and posted as Clerk-Typist in Directorate of Health and Medical Services on 27.7.71. The petitioner was selected by selection committee on the basis of result declared on 28.12.72 for the post of, what is stated as, English Typist and he was given regular appointment under the order dated 14th May 1973. As per the condition of aforesaid appointment, the persons appointed to the post of Clerk/ Clerk-cum-Typist were to receive training and were to pass the training examination to be conducted by the Director of Administration Training Institute. The petitioner was promoted as Senior Clerk on 24.2.80. The grievance of the petitioner is that he was shown as junior to the persons appointed as Junior Clerk after him and as such he made a representation against the same on 11.12.80. Further grievance of the petitioner is that he has been given lower seniority as he could not pass the training examination, but as per the case of petitioner, the fault lies with the Department as he has been transferred to the office of Director of Health and Medical Services, and as such because of his transfer he could not undergo the training. The petitioner made request for regularization of his services from 17th April 1970, if not from 19th October 1967, but that claim has also not been accepted. Hence this Special Civil Application.

#. The petitioner has amended this Special Civil Application and now he has come up with the case that as he was appointed as English Typist, he was not required to pass the said training examination. The training examination was required to be passed only by Clerks and Clerks-cum-Typists. Reference has been made to the Rules, namely Gujarat Non Secretariat Clerks, Clerk-Typists and Typist (Direct Recruitment Procedure) Rules 1970 (herein referred to as 'Rules 1970').

#. Reply to the Specail Civil Application has not been

filed by respondents. The Rules 1970 have been amended vide Notification dated 15th February 1985 and reference has been made to these Rules in the Special Civil Application.

#. The learned counsel for the petitioner contended that the petitioner should have been given the seniority from the date of initial appointment and all the consequential benefits following therefrom should also have been given, which has not been done. It has next been contended that many of the Clerks & Typists have been given seniority from the date of joining services and not from the date of their passing the said examination.

#. On the other hand, the learned counsel for the respondents contended that the petitioner has not passed the training examination and as such, he could not have been given seniority on the basis of his date of initial appointment. It has next been contended that the petitioner otherwise also, is not entitled for any benefit of his past services as he was appointed as Junior Clerk purely on adhoc and temporary basis. The adhoc services cannot be counted for the purpose of seniority.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Under the order annexure 'A' dated 17th October 1967, the petitioner was given appointment on the post of Junior Clerk purely on temporary basis. It has been mentioned in the order of appointment that vacancy of Junior Clerk in the office has to be filled up by the Collector of Ahmedabad through Central Recruitment Scheme and that is the reason that his appointment was made purely on temporary basis. His services were liable to be terminated without any notice or reasons. Under the order dated 27th July 1971, the petitioner was ordered to be transferred and posted as Clerk-Typist in the Directorate of Health & Medical Services. That order also contains specific condition that on availability of a candidate through Centralized Recruitment Scheme, he should be relieved from the post. After having gone through these two orders, it is clear that the petitioner was appointed purely on temporary basis and not through Centralized Recruitment Scheme. It appears to be a case where the petitioner has managed to continue on the basis of adhoc appointments. The possibility of shifting from the office of Civil Surgeon to the office of Directorate of Health & medical Services on availability of selected candidate in the office of Civil Surgeon cannot be

overruled. Be that as it may, the petitioner has been selected by the Central Recruitment Committee in the year 1972 and he has been allotted to the office of Directorate of Health & Medical Service vide order dated 14th May 1973 of Convener to the Departmental Selection Committee. It is incorrect to say on the part of petitioner that he has been selected for the post of English Typist. The order dated 14th May 1973 only suggests that the petitioner has been selected for the post of Typist. If we first take the plea of the petitioner that he was appointed as English Typist, then too the petitioner has no case whatsoever, as the Rules 1970 are not applicable in his case. When the Rules 1970 are not applicable to the case of petitioner, then the claim of petitioner for counting his services from the date of initial appointment, i.e. temporary appointment dated 17th October 1967 is not tenable. Temporary service could not be counted for giving seniority above those persons along with whom, the petitioner has been selected by the selection committee. If the Rules 1970 are applicable, then also the petitioner has no case. Sub Rule 3, of Rule 8 of the Rules 1970 as amended vide Notification dated 15th February 1985 is of little help to the petitioner. What this Sub Rule says is that a candidate who is appointed as a Clerk or a Clerk-Typist subject to undergoing training and/or passing the examination shall get seniority from the date of joining service if he completes the post training and passes the examination as prescribed in Rule 7 within three chances (four chances in case of Scheduled Caste or Scheduled Tribe candidate). I may again revert to the order dated 14th May 1973. Conditions No.5 and 6 of this appointment order are relevant and the same are reproduced below:

5. The candidates appointed for the post of Clerk/Clerk-Typist has to receive training and pass the training examination which will be conducted by the Director of Administrative Training Institute, Gujarat State, Ahmedabad. The concerned officers will send them for training in the suitable batches.

6. Seniority of the candidates will generally be regulated on the rank number given by the Department Selection Committee. However, if a candidate appointed for the post of Clerk/Clerk-Typist fails to pass the training examination at the first attempt he will lose seniority to those who may pass the

examination earlier.

The petitioner has accepted this appointment order and as such these two conditions are also binding on him. It is unfair on the part of the petitioner to take somersault after more than 12 years of that appointment order and claim that as he has been appointed as English Typist, these conditions are not applicable to him. The petitioner was required to undergo training and to pass training examination and seniority was to be assigned on the basis of rank given by the departmental Selection Committee where he passed the aforesaid examination within permissible attempts, which has not been done in the present case. So, Sub Rule 3 of Rule 8 of the amended Rules 1970, as aforesaid is of little help to the petitioner. The petitioner has given complete misreading of this Rule. The candidate who passes the examination within permissible attempts is only entitled for seniority from the date of his appointment, which should be his regular appointment and not adhoc or temporary appointment. There is a possibility that some of the candidates who may be junior because of merit number in selection would have passed examination in first or second attempt whereas seniors may have passed the examination in third attempt. In this eventuality, there may be possibility of giving of seniority with reference to passing date of examination. To overcome that difficulty this rule has been amended. When three chances were given for passing the examination, I find sufficient justification in the Rule to give seniority on the basis of date of appointment. That intention of the authority is clearly expressed in proviso to Sub Rule 3 of Rule 8 of rules 1970 as amended vide Notification dated 15th February 1985.

#. The petitioner has come up before this Court challenging seniority after more than five years. From the facts which have come on record, it appears that seniority list would have been framed though very conveniently the petitioner has not given date, earlier to 24th February 1980, the day on which the petitioner was promoted to the next higher post. The rights accrued to the person in the list have been crystallized and that seniority has been acted upon and promotions have been made. Now if the prayer of the petitioner is accepted, then the persons who have already been made senior to him will be made junior. That is sought to be prayed by petitioner without impleading those persons who are likely to be affected in case the petitioner's prayed is accepted. This is another reason for which the claim of the petitioner does not stand to any merit.

##. In the result, this Specail Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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